

**ASSEMBLY BILL**

**No. 1133**

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**Introduced by Assembly Member Dymally**

February 23, 2007

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An act to amend Sections 667, 667.1, 1170.12, and 1170.125 of, and to add Section 1170.126 to, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1133, as introduced, Dymally. Sentencing: three strikes.:

Existing law, as amended by initiative statutes, and commonly referred to as the “three strikes” law, provides for various sentencing enhancements for persons convicted of one or more felonies and who have one or more prior felony convictions for felonies defined as either “serious” or “violent.” Existing law provides that for a conviction of a felony with one prior conviction for a serious or violent felony the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction. Existing law provides that a person convicted of a felony who has 2 prior convictions for a serious or violent felony is subject to an indeterminate term of life with a minimum term of the greatest of 3 times the term otherwise provided, 25 years, or the other applicable term.

This bill would provide that if the current felony is not a serious or violent felony the person would be sentenced to the enhancement under the 3 strikes provisions that is applicable to a person with one prior conviction. These provisions would not apply if the current felony is a drug offense, a felony sex offense, involved the use of firearms or deadly weapons, or involved great bodily injury, or if any of the prior offenses was a sexually violent offense, any of certain sex offenses involving a

child, homicide, or a serious or violent felony punishable by life imprisonment or death.

The bill would provide a procedure for qualified persons to file a writ of habeas corpus for the purpose of being resentenced to a lesser sentence pursuant to the provisions of the bill. The bill would make other technical amendments.

The bill would provide that it would become effective only when submitted to, and approved by, the voters.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known, and may be cited as, the  
2 Three Strikes Reform Act of 2006.

3 SEC. 2. The Legislature finds and declares the following:

4 (a) Proposition 184 (the “Three Strikes” law) was  
5 overwhelmingly approved in 1994 with the intent of protecting  
6 law-abiding citizens by enhancing the sentences for a repeat  
7 offender who had committed serious or violent felonies, or both.

8 (b) Proposition 184 did not apply exclusively to enhance the  
9 sentences for serious or violent felonies committed by repeat  
10 offenders with prior convictions for serious or violent felonies.

11 (c) Proposition 184 did not establish reasonable criteria for  
12 limiting criminal acts that would be prosecuted as third strikes.

13 (d) Since its enactment, Proposition 184 has been used to  
14 enhance as third strikes, thousands of crimes committed by  
15 recidivists that were not serious or violent felonies, or both, at an  
16 excessive annual cost to taxpayers.

17 (e) It is the intent of the Legislature in enacting this measure to  
18 protect the people from repeat offenders who continue to commit  
19 serious or violent felonies, and to continue to provide greater  
20 punishment for those previously convicted of serious or violent  
21 felonies, or both, while providing reasonable criteria for felonies  
22 that may be prosecuted as third strikes.

23 SEC. 3. Section 667 of the Penal Code is amended to read:

24 667. (a) (1) In compliance with subdivision (b) of Section  
25 1385, any person convicted of a serious felony who previously  
26 has been convicted of a serious felony in this state or of any offense  
27 committed in another jurisdiction which includes all of the elements

1 of any serious felony, shall receive, in addition to the sentence  
2 imposed by the court for the present offense, a five-year  
3 enhancement for each such prior conviction on charges brought  
4 and tried separately. The terms of the present offense and each  
5 enhancement shall run consecutively.

6 (2) This subdivision shall not be applied when the punishment  
7 imposed under other provisions of law would result in a longer  
8 term of imprisonment. There is no requirement of prior  
9 incarceration or commitment for this subdivision to apply.

10 (3) The Legislature may increase the length of the enhancement  
11 of sentence provided in this subdivision by a statute passed by  
12 majority vote of each house thereof.

13 (4) As used in this subdivision, “serious felony” means a serious  
14 felony listed in subdivision (c) of Section 1192.7.

15 (5) This subdivision shall not apply to a person convicted of  
16 selling, furnishing, administering, or giving, or offering to sell,  
17 furnish, administer, or give to a minor any  
18 methamphetamine-related drug or any precursors of  
19 methamphetamine unless the prior conviction was for a serious  
20 felony described in subparagraph (24) of subdivision (c) of Section  
21 1192.7.

22 (b) It is the intent of the Legislature in enacting subdivisions  
23 (b) to (i), inclusive, to ensure longer prison sentences and greater  
24 punishment for those who commit a felony and have been  
25 previously convicted of serious and/or violent felony offenses.

26 (c) Notwithstanding any other law, if a defendant has been  
27 convicted of a felony and it has been pled and proved that the  
28 defendant has one or more prior *serious and/or violent* felony  
29 convictions as defined in subdivision (d), the court shall adhere to  
30 each of the following:

31 (1) There shall not be an aggregate term limitation for purposes  
32 of consecutive sentencing for any subsequent felony conviction.

33 (2) Probation for the current offense shall not be granted, nor  
34 shall execution or imposition of the sentence be suspended for any  
35 prior offense.

36 (3) The length of time between the prior *serious and/or violent*  
37 felony conviction and the current felony conviction shall not affect  
38 the imposition of sentence.

39 (4) There shall not be a commitment to any other facility other  
40 than the state prison. Diversion shall not be granted nor shall the

1 defendant be eligible for commitment to the California  
2 Rehabilitation Center as provided in Article 2 (commencing with  
3 Section 3050) of Chapter 1 of Division 3 of the Welfare and  
4 Institutions Code.

5 (5) The total amount of credits awarded pursuant to Article 2.5  
6 (commencing with Section 2930) of Chapter 7 of Title 1 of Part  
7 3 shall not exceed one-fifth of the total term of imprisonment  
8 imposed and shall not accrue until the defendant is physically  
9 placed in the state prison.

10 (6) If there is a current conviction for more than one felony  
11 count not committed on the same occasion, and not arising from  
12 the same set of operative facts, the court shall sentence the  
13 defendant consecutively on each count pursuant to subdivision  
14 (e).

15 (7) If there is a current conviction for more than one serious or  
16 violent felony as described in paragraph (6), the court shall impose  
17 the sentence for each conviction consecutive to the sentence for  
18 any other conviction for which the defendant may be consecutively  
19 sentenced in the manner prescribed by law.

20 (8) Any sentence imposed pursuant to subdivision (e) will be  
21 imposed consecutive to any other sentence which the defendant  
22 is already serving, unless otherwise provided by law.

23 (d) Notwithstanding any other law and for the purposes of  
24 subdivisions (b) to (i), inclusive, a prior conviction of a *serious*  
25 *and/or violent* felony shall be defined as:

26 (1) Any offense defined in subdivision (c) of Section 667.5 as  
27 a violent felony or any offense defined in subdivision (c) of Section  
28 1192.7 as a serious felony in this state. The determination of  
29 whether a prior conviction is a prior *serious and/or violent* felony  
30 conviction for purposes of subdivisions (b) to (i), inclusive, shall  
31 be made upon the date of that prior conviction and is not affected  
32 by the sentence imposed unless the sentence automatically, upon  
33 the initial sentencing, converts the felony to a misdemeanor. None  
34 of the following dispositions shall affect the determination that a  
35 prior conviction is a prior *serious and/or violent* felony for purposes  
36 of subdivisions (b) to (i), inclusive:

37 (A) The suspension of imposition of judgment or sentence.

38 (B) The stay of execution of sentence.

1 (C) The commitment to the State Department of Health Care  
2 Services as a mentally disordered sex offender following a  
3 conviction of a felony.

4 (D) The commitment to the California Rehabilitation Center or  
5 any other facility whose function is rehabilitative diversion from  
6 the state prison.

7 (2) A *prior* conviction in another jurisdiction for an offense  
8 that, if committed in California, is punishable by imprisonment in  
9 the state prison. ~~A shall constitute a prior conviction of a particular~~  
10 ~~serious and/or violent felony shall include a if the prior conviction~~  
11 ~~in another the other jurisdiction is for an offense that includes all~~  
12 ~~of the elements of the particular violent felony as defined in~~  
13 ~~subdivision (c) of Section 667.5 or serious felony as defined in~~  
14 ~~subdivision (c) of Section 1192.7.~~

15 (3) A prior juvenile adjudication shall constitute a prior *serious*  
16 *and/or violent* felony conviction for purposes of sentence  
17 enhancement if:

18 (A) The juvenile was 16 years of age or older at the time he or  
19 she committed the prior offense.

20 (B) The prior offense is listed in subdivision (b) of Section 707  
21 of the Welfare and Institutions Code or described in paragraph (1)  
22 or (2) as a *serious and/or violent* felony.

23 (C) The juvenile was found to be a fit and proper subject to be  
24 dealt with under the juvenile court law.

25 (D) The juvenile was adjudged a ward of the juvenile court  
26 within the meaning of Section 602 of the Welfare and Institutions  
27 Code because the person committed an offense listed in subdivision  
28 (b) of Section 707 of the Welfare and Institutions Code.

29 (e) For purposes of subdivisions (b) to (i), inclusive, and in  
30 addition to any other enhancement or punishment provisions which  
31 may apply, the following shall apply where a defendant has ~~a one~~  
32 ~~or more prior serious and/or violent felony conviction convictions:~~

33 (1) If a defendant has one prior *serious and/or violent* felony  
34 conviction that has been pled and proved, the determinate term or  
35 minimum term for an indeterminate term shall be twice the term  
36 otherwise provided as punishment for the current felony conviction.

37 (2) (A) ~~If~~ *Except as provided in subparagraph (C), if* a  
38 defendant has two or more prior *serious and/or violent* felony  
39 convictions as defined in subdivision (d) that have been pled and  
40 proved, the term for the current felony conviction shall be an

1 indeterminate term of life imprisonment with a minimum term of  
2 the indeterminate sentence calculated as the ~~greater~~ *greatest* of:

3 (i) Three times the term otherwise provided as punishment for  
4 each current felony conviction subsequent to the two or more  
5 *serious and/or violent* prior felony convictions.

6 (ii) Imprisonment in the state prison for 25 years.

7 (iii) The term determined by the court pursuant to Section 1170  
8 for the underlying conviction, including any enhancement  
9 applicable under Chapter 4.5 (commencing with Section 1170) of  
10 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

11 (B) The indeterminate term described in subparagraph (A) shall  
12 be served consecutive to any other term of imprisonment for which  
13 a consecutive term may be imposed by law. Any other term  
14 imposed subsequent to any indeterminate term described in  
15 subparagraph (A) shall not be merged therein but shall commence  
16 at the time the person would otherwise have been released from  
17 prison.

18 (C) *If a defendant has two or more prior serious and/or violent*  
19 *felony convictions, as defined in subdivision (d) that have been*  
20 *pled and proved, and the current offense is not a serious or violent*  
21 *felony as defined in subdivision (d), the defendant shall be*  
22 *sentenced pursuant to paragraph (1) of subdivision (e), unless the*  
23 *prosecution pleads and proves any of the following:*

24 (i) *The current offense is a controlled substance charge, in*  
25 *which an allegation under Section 11370.4 or 11379.8 of the*  
26 *Health and Safety Code was admitted or found true.*

27 (ii) *The current offense is a felony sex offense, defined in*  
28 *subdivision (d) of Section 261.5 or Section 262, or listed in*  
29 *subparagraph (A) of paragraph (2) of subdivision (a) of Section*  
30 *290, except for Sections 266, 285, paragraph (1) of subdivision*  
31 *(b) and subdivision (e) of Section 286, and paragraph (1) of*  
32 *subdivision (b) and subdivision (e) of Section 288a.*

33 (iii) *During the commission of the current offense, the defendant*  
34 *used a firearm, was armed with a firearm or deadly weapon, or*  
35 *intended to cause great bodily injury to another person.*

36 (iv) *The defendant suffered a prior conviction, as defined in*  
37 *subdivision (d) for any of the following serious and/or violent*  
38 *felonies:*

39 (I) *A “sexually violent offense” as defined in subdivision (b) of*  
40 *Section 6600 of the Welfare and Institutions Code.*

1     ~~(II) Oral copulation with a child who is under 14 years of age,~~  
2     ~~and who is more than 10 years younger than he or she, as defined~~  
3     ~~in Section 288a, sodomy with a child who is under 14 years of age~~  
4     ~~and who is more than 10 years younger than he or she, as defined~~  
5     ~~in Section 286, or sexual penetration with a child who is under 14~~  
6     ~~years of age, and who is more than 10 years younger than he or~~  
7     ~~she, as defined in Section 289.~~

8     ~~(III) A lewd or lascivious act involving a child under 14 years~~  
9     ~~of age in violation of Section 288.~~

10    ~~(IV) Any homicide offense defined in Sections 187 to 191.5,~~  
11    ~~inclusive.~~

12    ~~(V) Any serious or violent felony offense punishable by life~~  
13    ~~imprisonment or death.~~

14    (f) (1) Notwithstanding any other law, subdivisions (b) to (i),  
15    inclusive, shall be applied in every case in which a defendant has  
16    a prior *serious and/or violent* felony conviction as defined in  
17    subdivision (d). The prosecuting attorney shall plead and prove  
18    each prior *serious and/or violent* felony conviction except as  
19    provided in paragraph (2).

20    (2) The prosecuting attorney may move to dismiss or strike a  
21    prior *serious and/or violent* felony conviction allegation in the  
22    furtherance of justice pursuant to Section 1385, or if there is  
23    insufficient evidence to prove the prior *serious and/or violent*  
24    conviction. If upon the satisfaction of the court that there is  
25    insufficient evidence to prove the prior *serious and/or violent*  
26    felony conviction, the court may dismiss or strike the allegation.

27    (g) Prior *serious and/or violent* felony convictions shall not be  
28    used in plea bargaining as defined in subdivision (b) of Section  
29    1192.7. The prosecution shall plead and prove all known prior  
30    *serious and/or violent* felony convictions and shall not enter into  
31    any agreement to strike or seek the dismissal of any prior *serious*  
32    *and/or violent* felony conviction allegation except as provided in  
33    paragraph (2) of subdivision (f).

34    (h) All references to existing statutes in subdivisions (c) to (g),  
35    inclusive, are to statutes as they existed on ~~June 30, 1993~~ November  
36    8, 2006.

37    (i) If any provision of subdivisions (b) to (h), inclusive, or the  
38    application thereof to any person or circumstance is held invalid,  
39    that invalidity shall not affect other provisions or applications of  
40    those subdivisions which can be given effect without the invalid

1 provision or application, and to this end the provisions of those  
2 subdivisions are severable.

3 (j) The provisions of this section shall not be amended by the  
4 Legislature except by statute passed in each house by rollcall vote  
5 entered in the journal, two-thirds of the membership concurring,  
6 or by a statute that becomes effective only when approved by the  
7 electors.

8 SEC. 4. Section 667.1 of the Penal Code is amended to read:

9 667.1. Notwithstanding subdivision (h) of Section 667, for all  
10 offenses committed on or after the effective date of this act, all  
11 references to existing statutes in subdivisions (c) to (g), inclusive,  
12 of Section 667, are to those statutes as they existed on the effective  
13 date of this act, including amendments made to those statutes by  
14 the act enacted during the ~~2005–06~~ 2007–08 Regular Session, *as*  
15 *approved by the voters*, that amended this section ~~November 8,~~  
16 ~~2006~~.

17 SEC. 5. Section 1170.12 of the Penal Code is amended to read:

18 1170.12. (a) Notwithstanding any other provision of law, if a  
19 defendant has been convicted of a felony and it has been pled and  
20 proved that the defendant has one or more prior *serious and/or*  
21 *violent* felony convictions, as defined in subdivision (b), the court  
22 shall adhere to each of the following:

23 (1) There shall not be an aggregate term limitation for purposes  
24 of consecutive sentencing for any subsequent felony conviction.

25 (2) Probation for the current offense shall not be granted, nor  
26 shall execution or imposition of the sentence be suspended for any  
27 prior offense.

28 (3) The length of time between the prior *serious and/or violent*  
29 felony conviction and the current felony conviction shall not affect  
30 the imposition of sentence.

31 (4) There shall not be a commitment to any other facility other  
32 than the state prison. Diversion shall not be granted nor shall the  
33 defendant be eligible for commitment to the California  
34 Rehabilitation Center as provided in Article 2 (commencing with  
35 Section 3050) of Chapter 1 of Division 3 of the Welfare and  
36 Institutions Code.

37 (5) The total amount of credits awarded pursuant to Article 2.5  
38 (commencing with Section 2930) of Chapter 7 of Title 1 of Part  
39 3 shall not exceed one-fifth of the total term of imprisonment



1 imposed and shall not accrue until the defendant is physically  
2 placed in the state prison.

3 (6) If there is a current conviction for more than one felony  
4 count not committed on the same occasion, and not arising from  
5 the same set of operative facts, the court shall sentence the  
6 defendant consecutively on each count pursuant to this section.

7 (7) If there is a current conviction for more than one serious or  
8 violent felony as described in paragraph (6) of this subdivision,  
9 the court shall impose the sentence for each conviction consecutive  
10 to the sentence for any other conviction for which the defendant  
11 may be consecutively sentenced in the manner prescribed by law.

12 (8) Any sentence imposed pursuant to this section will be  
13 imposed consecutive to any other sentence which the defendant  
14 is already serving, unless otherwise provided by law.

15 (b) Notwithstanding any other provision of law and for the  
16 purposes of this section, a prior conviction of a *serious and/or*  
17 *violent* felony shall be defined as:

18 (1) Any offense defined in subdivision (c) of Section 667.5 as  
19 a violent felony or any offense defined in subdivision (c) of Section  
20 1192.7 as a serious felony in this state. The determination of  
21 whether a prior conviction is a prior *serious and/or violent* felony  
22 conviction for purposes of this section shall be made upon the date  
23 of that prior conviction and is not affected by the sentence imposed  
24 unless the sentence automatically, upon the initial sentencing,  
25 converts the felony to a misdemeanor. None of the following  
26 dispositions shall affect the determination that a prior conviction  
27 is a prior *serious and/or violent* felony for purposes of this section:

28 (A) The suspension of imposition of judgment or sentence.

29 (B) The stay of execution of sentence.

30 (C) The commitment to the State Department of Health Services  
31 as a mentally disordered sex offender following a conviction of a  
32 felony.

33 (D) The commitment to the California Rehabilitation Center or  
34 any other facility whose function is rehabilitative diversion from  
35 the state prison.

36 (2) A *prior* conviction in another jurisdiction for an offense  
37 that, if committed in California, is punishable by imprisonment in  
38 the state prison. ~~A shall constitute a prior conviction of a particular~~  
39 ~~serious and/or violent felony shall include a if the prior conviction~~  
40 ~~in another the other jurisdiction is for an offense that includes all~~

1 of the elements of the particular *violent* felony as defined in  
2 subdivision (c) of Section 667.5 or *serious felony as defined in*  
3 subdivision (c) of Section 1192.7.

4 (3) A prior juvenile adjudication shall constitute a prior *serious*  
5 *and/or violent* felony conviction for purposes of sentence  
6 enhancement if:

7 (A) The juvenile was sixteen years of age or older at the time  
8 he or she committed the prior offense, and

9 (B) The prior offense is

10 (i) listed in subdivision (b) of Section 707 of the Welfare and  
11 Institutions Code, or

12 (ii) listed in this subdivision as a *serious and/or violent* felony,  
13 and

14 (C) The juvenile was found to be a fit and proper subject to be  
15 dealt with under the juvenile court law, and

16 (D) The juvenile was adjudged a ward of the juvenile court  
17 within the meaning of Section 602 of the Welfare and Institutions  
18 Code because the person committed an offense listed in subdivision  
19 (b) of Section 707 of the Welfare and Institutions Code.

20 (c) For purposes of this section, and in addition to any other  
21 enhancements or punishment provisions which may apply, the  
22 following shall apply where a defendant has ~~a one or more~~ prior  
23 *serious and/or violent felony conviction* convictions:

24 (1) If a defendant has one prior *serious and/or violent* felony  
25 conviction *as defined in subdivision (b)* that has been pled and  
26 proved, the determinate term or minimum term for an indeterminate  
27 term shall be twice the term otherwise provided as punishment for  
28 the current felony conviction.

29 (2) (A) ~~If~~ *Except as provided in subparagraph (C), if* a  
30 defendant has two or more prior *serious and/or violent* felony  
31 convictions, as defined in ~~paragraph (1)~~ subdivision (b), that  
32 have been pled and proved, the term for the current felony  
33 conviction shall be an indeterminate term of life imprisonment  
34 with a minimum term of the indeterminate sentence calculated as  
35 the ~~greater~~ *greatest* of:

36 (i) ~~three~~ *Three* times the term otherwise provided as punishment  
37 for each current felony conviction subsequent to the two or more  
38 prior *serious and/or violent* felony convictions, ~~or~~.

39 (ii) ~~twenty-five~~ *Twenty-five* years ~~or~~.

1 (iii)—~~the~~ The term determined by the court pursuant to Section  
2 1170 for the underlying conviction, including any enhancement  
3 applicable under Chapter 4.5 (commencing with Section 1170) of  
4 Title 7 of Part 2, or any period prescribed by Section 190 or 3046.

5 (B) The indeterminate term described in subparagraph (A) of  
6 paragraph (2) of this subdivision shall be served consecutive to  
7 any other term of imprisonment for which a consecutive term may  
8 be imposed by law. Any other term imposed subsequent to any  
9 indeterminate term described in subparagraph (A) of paragraph  
10 (2) of this subdivision shall not be merged therein but shall  
11 commence at the time the person would otherwise have been  
12 released from prison.

13 (C) *If a defendant has two or more prior serious and/or violent*  
14 *felony convictions, as defined in subdivision (b) that have been*  
15 *pled and proved, and the current offense is not a felony as*  
16 *described in paragraph (1) of subdivision (b), the defendant shall*  
17 *be sentenced pursuant to paragraph (1) of subdivision (c), unless*  
18 *the prosecution pleads and proves any of the following:*

19 (i) *The current offense is a controlled substance charge, in*  
20 *which an allegation under Section 11370.4 or 11379.8 of the*  
21 *Health and Safety Code was admitted or found true.*

22 (ii) *The current offense is a felony sex offense, defined in*  
23 *subdivision (d) of Section 261.5 or Section 262, or listed in*  
24 *subparagraph (A) of paragraph (2) of subdivision (a) of Section*  
25 *290, except for Sections 266, 285, paragraph (1) of subdivision*  
26 *(b) and subdivision (e) of Section 286, and paragraph (1) of*  
27 *subdivision (b) and subdivision (e) of Section 288a.*

28 (iii) *During the commission of the current offense, the defendant*  
29 *used a firearm, was armed with a firearm or deadly weapon, or*  
30 *intended to cause great bodily injury to another person.*

31 (iv) *The defendant suffered a prior conviction, for any of the*  
32 *following felonies:*

33 (I) *A “sexually violent offense” as defined in subdivision (b) of*  
34 *Section 6600 of the Welfare and Institutions Code.*

35 (II) *Oral copulation with a child who is under 14 years of age,*  
36 *and who is more than 10 years younger than he or she, as defined*  
37 *in Section 288a, sodomy with a child who is under 14 years of age*  
38 *and who is more than 10 years younger than he or she, as defined*  
39 *in Section 286, or sexual penetration with a child who is under 14*

1 *years of age, and who is more than 10 years younger than he or*  
2 *she, as defined in Section 289.*

3 *(III) A lewd or lascivious act involving a child under 14 years*  
4 *of age in violation of Section 288.*

5 *(IV) Any homicide offense defined in Sections 187 to 191.5,*  
6 *inclusive.*

7 *(V) Any serious and/or violent felony offense punishable by life*  
8 *imprisonment or death.*

9 (d) (1) Notwithstanding any other provision of law, this section  
10 shall be applied in every case in which a defendant has ~~a one or~~  
11 ~~more prior serious and/or violent felony conviction convictions,~~  
12 ~~or both,~~ as defined in this section. The prosecuting attorney shall  
13 plead and prove each prior *serious and/or violent* felony conviction  
14 except as provided in paragraph (2).

15 (2) The prosecuting attorney may move to dismiss or strike a  
16 prior *serious and/or violent* felony conviction allegation in the  
17 furtherance of justice pursuant to Section 1385, or if there is  
18 insufficient evidence to prove the prior *serious and/or violent*  
19 *felony* conviction. If upon the satisfaction of the court that there  
20 is insufficient evidence to prove the prior *serious and/or violent*  
21 felony conviction, the court may dismiss or strike the allegation.

22 (e) Prior *serious and/or violent* felony convictions shall not be  
23 used in plea bargaining, as defined in subdivision (b) of Section  
24 1192.7. The prosecution shall plead and prove all known prior  
25 *serious and/or violent* felony convictions and shall not enter into  
26 any agreement to strike or seek the dismissal of any prior *serious*  
27 *and/or violent* felony conviction allegation except as provided in  
28 paragraph (2) of subdivision (d).

29 (f) *If any provision of subdivisions (a) to (e), inclusive, or of*  
30 *Section 1170.126, or the application thereof to any person or*  
31 *circumstance is held invalid, that invalidity shall not affect other*  
32 *provisions or applications of those subdivisions that can be given*  
33 *effect without the invalid provision or application, and to this end*  
34 *the provisions of those subdivisions are severable.*

35 (g) *The provisions of this section shall not be amended by the*  
36 *Legislature except by statute passed in each house by rollcall vote*  
37 *entered in the journal, two-thirds of the membership concurring,*  
38 *or by a statute that becomes effective only when approved by the*  
39 *electors.*

1 SEC. 6. Section 1170.125 of the Penal Code is amended to  
2 read:

3 1170.125. Notwithstanding Section 2 of Proposition 184, as  
4 adopted at the November 8, 1994, general election, for all offenses  
5 committed on or after the effective date of this act, all references  
6 to existing statutes in Section 1170.12 are to those statutes as they  
7 existed on the effective date of this act, including amendments  
8 made to those statutes by the act enacted during the ~~2005–06~~  
9 ~~2007–08~~ Regular Session, *as approved by the voters*, that amended  
10 this section ~~November 8, 2006~~.

11 SEC. 7. Section 1170.126 is added to the Penal Code, to read:

12 1170.126. (a) The resentencing provisions under this section  
13 are intended to apply exclusively to persons presently serving an  
14 indeterminate term of imprisonment pursuant to paragraph (2) of  
15 subdivision (e) of Section 667 or paragraph (2) of subdivision (c)  
16 of Section 1170.12, whose sentence under the Three Strikes Reform  
17 Act of 2006 would not have been an indeterminate life sentence.

18 (b) Subject to exclusions and limitations set forth below in  
19 subdivisions (b) and (c), any person serving an indeterminate term  
20 of life imprisonment imposed pursuant to paragraph (2) of  
21 subdivision (e) of Section 667 or paragraph (2) of subdivision (c)  
22 of Section 1170.12 upon conviction, whether by trial or plea, of a  
23 felony or felonies that are not defined as serious and/or violent  
24 felonies by subdivision (c) of Section 667.5 or subdivision (c) of  
25 Section 1192.7, respectively, may file a petition for a writ of habeas  
26 corpus, within two years after the effective date of the Three Strikes  
27 Reform Act of 2006, before the trial court that entered the judgment  
28 of conviction in his or her case, to request resentencing in  
29 accordance with the provisions of subdivision (e) of Section 667,  
30 or subdivision (c) of Section 1170.12, as those statutes have been  
31 amended by the Three Strikes Reform Act of 2006.

32 (c) No person who is presently serving a term of imprisonment  
33 for a “second strike” conviction imposed pursuant to paragraph  
34 (1) of subdivision (e) of Section 667 or paragraph (1) of subdivision  
35 (c) of Section 1170.12, shall be eligible for resentencing under the  
36 provisions of this section.

37 (d) The petition for a writ of habeas corpus described in  
38 subdivision (b) shall specify all the currently charged felonies  
39 which resulted in the sentence under paragraph (2) of subdivision  
40 (e) of Section 667 or paragraph (2) of subdivision (c) of Section

1 1170.12, or both, and shall also specify all of the prior convictions  
2 alleged and proved under subdivision (d) of Section 667 or  
3 subdivision (b) of Section 1170.12 or both.

4 (e) A person who meets the requirements of subdivision (b)  
5 may request appointment of counsel by sending to the sentencing  
6 court, a written request for representation by counsel to prepare a  
7 petition under this section and for purposes of resentencing.

8 (f) If the court determines that the person filing a petition for  
9 writ of habeas corpus is eligible to be resentenced under the criteria  
10 set forth in subdivision (b) and is not excluded by the disqualifying  
11 factors in subparagraph (C) of paragraph (2) of subdivision (e) of  
12 Section 667 or subparagraph (C) of paragraph (2) of subdivision  
13 (c) of Section 1170.12, and if the court, in its discretion, determines  
14 that relief is warranted, the court shall resentence that persons in  
15 accordance with the three strikes statutes as amended by the Three  
16 Strike Reform Act of 2006, unless another law provides for a longer  
17 sentence.

18 (g) Under no circumstances may resentencing under this act  
19 result in the imposition of a term longer than the original sentence.

20 (h) Notwithstanding subdivision (b) of Section 977, a defendant  
21 petitioning for resentencing may waive his or her appearance in  
22 court for the resentencing, provided that the accusatory pleading  
23 is not amended at the resentencing, and that no new trial or retrial  
24 of the individual will occur. The waiver shall be in writing and  
25 signed by the defendant.

26 (i) If the judge that originally sentenced the defendant is not  
27 available to resentence the defendant, the presiding judge may  
28 designate another judge to rule on the defendant's petition.

29 (j) Nothing in this section is intended to diminish or abrogate  
30 any rights or remedies otherwise available to the defendant.

31 (k) Nothing in this section is intended to diminish or abrogate  
32 the finality of judgments in any case not falling within the purview  
33 of this act.

34 SEC. 8. The Three Strikes Reform Act of 2006 is an exercise  
35 of the public power of the People of the State of California for the  
36 protection of the health, safety, and welfare of the People of the  
37 State of California, and shall be liberally construed to effectuate  
38 those purposes.

39 SEC. 9. The provisions of this act are severable. If any  
40 provision of this act or its application is held invalid, that invalidity

1 shall not affect other provisions or applications that can be given  
2 effect without the invalid provision or application.  
3 SEC. 10. Sections 1 to 9, inclusive, affect initiative statutes,  
4 and shall become effective only when submitted to, and approved  
5 by, the voters of California, pursuant to subdivision (c) of Section  
6 10 of Article II of the California Constitution.

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